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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/782,752      | 02/13/2001  | William John Gauthier | 31223-73767         | 9688             |

7590 11/04/2003

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EXAMINER

BROWN, JENNINE M

ART UNIT

PAPER NUMBER

1755

12

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

6b 12

|                              |                              |                  |
|------------------------------|------------------------------|------------------|
| <b>Office Action Summary</b> | Applicant No.                | Applicant(s)     |
|                              | 09/782,752                   | GAUTHIER ET AL.  |
|                              | Examiner<br>Jennine M. Brown | Art Unit<br>1755 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-31 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . | 6) <input type="checkbox"/> Other: ____ .                                   |

## **DETAILED ACTION**

### ***Abstract***

Examiner has withdrawn the previous objection to the abstract.

### ***Claim Objections***

Examiner has entered Applicants amendment, which obviates Examiners previous objection, therefore the objection has been withdrawn.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-31 are provisionally rejected under **35 U.S.C. 101** as claiming the same invention as that of claims 1-34 of copending Application No. 09/782,753. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Both applications are drawn to a process for the preparation of a supported metallocene catalyst where a particulate silica alumoxane support is mixed with a metallocene catalyst in an aromatic hydrocarbon solvent, mixed at a temperature of about 10 °C or less, recovering supported catalyst from solvent, washing in a paraffinic hydrocarbon solvent at a temperature of about 10 °C or less and dispersing washed catalyst in hydrocarbon solvent which is mineral oil. Both applications claim a supported catalyst value of no more than 50% by weight, mineral

oil viscosity of at least 10 centistokes and paraffinic hydrocarbon solvent viscosity of no more than 2 centistokes, optional subsequent washing step, silica average particle size overlap between 20-50 microns, different stereospecificity between cyclopentadienyl structures, an identical syndiospecific metallocene formula having substituted or unsubstituted fluorenyl groups, metals which are titanium, zirconium, hafnium or vanadium, R" is methylene, ethylene, organosilyl, substituted methylene or substituted ethylene radical, ( $Cp_aR_n$ ) fluorenyl radical has bilateral symmetry and R' is selected such that ( $Cp_bR'm$ ) forms an alkyl substituted or unsubstituted cyclopentadienyl radical having bilateral symmetry, weight ratio alumoxane to silica overlaps from 0.6 to 1.5, both claim a isopropylidene (cyclopentadienyl-1-2,7-di-tert-butyl fluorenyl) ligand or a diphenyl methylene (cyclopentadienyl-1-fluorenyl) ligand, both claim an identical isospecific metallocene which is inherently stereorigid if there is a bridging ligand between the cyclopentadienyl ligands where the indenyl groups are substituted or unsubstituted at the proximal position and selected from racemic dimethylsilyl(2-methyl-4-phenyl indenyl)<sub>2</sub> zirconium dichloride, racemic dimethylsilyl(2-methyl-4-indenyl)<sub>2</sub> zirconium dichloride, and racemic dimethylsilyl(2-methyl-4,5-benzo indenyl)<sub>2</sub> zirconium dichloride and mixtures thereof.

The terminal disclaimer has been recorded but does not overcome a rejection based on 35 U.S.C. 101.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of

the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennine M. Brown whose telephone number is (703) 305-0435. The examiner can normally be reached on M-F 8:00 AM - 6:00 PM; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

After the move to the new USPTO Headquarters in Alexandria, VA, tentatively scheduled for the week of December 22, 2003, the examiner's new phone number will be (571) 272-1364 and Mr. Bell's new phone number will be (571) 272-1362.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jmb



ELIZABETH D. WOOD  
PRIMARY EXAMINER